

ZEICHNER ELLMAN & KRAUSE LLP  
103 Eisenhower Parkway  
Roseland, New Jersey 07068  
(973) 618-9100  
WILLIAM T. MARSHALL, JR. (WM0626)  
PHILIP S. ROSEN (PR0116)  
KERRY A. DUFFY (KD6480)  
Attorneys for Defendant Bank of America, N.A.,  
f/k/a Countrywide Bank, FSB, improperly sued  
as Bank of America Corporation

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

CARL D'ARGENZIO and BARBARA  
D'ARGENZIO,

Plaintiffs,

v.

BANK OF AMERICA CORPORATION,  
f/k/a COUNTRYWIDE BANK, FSB

Defendant.

Civil Action No. 1:09-cv-05604

Hon. Jerome B. Simandle

(Joel Schneider, U.S.M.J.)

**ANSWER AND AFFIRMATIVE  
DEFENSES OF DEFENDANT  
BANK OF AMERICA, N.A. TO  
FIRST AMENDED CIVIL  
ACTION COMPLAINT**

Defendant Bank of America, N.A., f/k/a Countrywide Bank, FSB ("Bank of America"), improperly sued herein as Bank of America Corporation, by its undersigned attorneys, Zeichner Ellman & Krause LLP, files its Answer with Affirmative Defenses to the First Amended Civil Action Complaint ("Complaint") of Plaintiffs, Carl D'Argenzio and Barbara D'Argenzio (collectively "Plaintiffs"), upon information and belief, as follows:

**I. Preliminary Statement**

1. Bank of America denies the allegations contained in paragraph 1(a) – (e) of the Complaint as this paragraph pleads the relief sought by Plaintiffs and the averments are not statements of fact to which a response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

2. Bank of America denies the allegations contained in paragraph 2 of the Complaint as this paragraph pleads the relief sought by Plaintiffs and the averments are not statements of fact to which a response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

3. Bank of America is not required to answer the allegations contained in paragraph 3 of the Complaint as they are not statements of fact to which a response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

4. In response to the allegations in paragraph 4 of the Complaint, Bank of America incorporates its responses to each and every averment incorporated or referred to by Plaintiff in said paragraph.

**II. Jurisdiction and Venue**

5. Bank of America admits the allegations contained in paragraph 5 of the Complaint to the extent they are factual and avers that it is not required to answer allegations or statements which are not factual in nature.

6. Bank of America admits that it does business within the State of New Jersey, however, denies the remainder of the factual allegations contained in paragraph 6 of the Complaint.

### **III. Parties**

7. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint.

8. Bank of America, a citizen of North Carolina, denies the allegation contained in paragraph 8 of the Complaint. Bank of America, N.A., f/k/a Countrywide Bank, FSB ("Bank of America") was improperly sued herein as Bank of America Corporation.

9. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint.

### **IV. Operative Facts**

10. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint. Bank of America, except admits that Plaintiffs became borrowers on a Mortgage and Note in the amount of \$229,500.00 executed by Plaintiffs on or about November 6, 2007 and that the loan is secured by the property located at 105 Salem Avenue, Blackwood, Washington Township, New Jersey.

11. Bank of America is without knowledge or information sufficient

to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.

12. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.

13. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations, which are vague, contained in paragraph 13 of the Complaint.

14. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint.

15. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint.

16. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint.

17. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.

18. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the

Complaint.

19. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint.

20. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint.

21. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint.

22. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint.

23. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint.

24. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint.

25. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint.

26. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint.

27. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint.

28. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint.

29. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint.

**July, 2008 Application for Re-financing**

30. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint.

31. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Complaint.

32. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint.

33. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint.

34. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint.

35. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint.

36. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint.

37. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.

38. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint.

39. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint.

40. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint.

41. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint.

42. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint.

43. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint.

44. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Complaint.

45. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Complaint.

46. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Complaint.



47. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Complaint.

48. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Complaint.

49. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the Complaint.

50. Bank of America denies the allegations contained in paragraph 50 of the Complaint.

51. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint.

52. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the Complaint.

53. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the Complaint.

54. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Complaint.

55. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the Complaint.

56. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint.

57. Bank of America is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the Complaint, except admits that it avers that its records show that on or about September 8, 2008 it sent a notice to Plaintiffs, and refers to the notice itself for its contents.

58. Bank of America denies the allegations contained in paragraph 58 of the Complaint.

59. Bank of America denies the allegations contained in paragraph 59 of the Complaint.

60. Bank of America denies the allegations contained in paragraph 60 of the Complaint.

61. Bank of America denies the allegations contained in paragraph 61 of the Complaint.

62. Bank of America denies the allegations contained in paragraph 62

of the Complaint.

63. Bank of America denies the allegations contained in paragraph 63 of the Complaint.

64. Bank of America denies the allegations contained in paragraph 64 of the Complaint.

**D. Injuries**

65. Bank of America denies the allegations contained in paragraph 65 of the Complaint.

66. This number is missing within the Complaint.

67. This number is missing within the Complaint.

**V. Causes of Action**

68. Bank of America avers that the allegations contained in paragraph 68 of the Complaint plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

69. Bank of America avers that the allegations contained in paragraph 69 of the Complaint plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

70. Bank of America avers that the allegations contained in paragraph 70 of the Complaint plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is

required, each such averment is denied.

71. Bank of America avers that the allegations contained in paragraph 71 of the Complaint as this paragraph plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

### **COUNT I**

#### **Equal Credit Opportunity Act ("ECOA")**

72. Bank of America avers that the allegations contained in paragraph 72 of the Complaint as this paragraph plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

73. Bank of America avers that the allegations contained in paragraph 73 of the Complaint as this paragraph plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

74. Bank of America denies each and every allegation contained in Paragraph 74 of the Complaint.

75. Bank of America avers that the allegations contained in paragraph 75 of the Complaint as this paragraph plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

76. Bank of America avers that the allegations contained in paragraph 76 of the Complaint as this paragraph plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

77. Bank of America avers that the allegations contained in paragraph 77 of the Complaint as this paragraph plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

78. Bank of America avers that the allegations contained in paragraph 78 of the Complaint as this paragraph plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

79. Bank of America avers that the allegations contained in paragraph 79 of the Complaint as this paragraph plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

80. Bank of America avers that the allegations contained in paragraph 80 of the Complaint as this paragraph plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

81. Bank of America avers that the allegations contained in paragraph 81 of the Complaint as this paragraph plead a conclusion of law to which no response is

required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

82. Bank of America avers that the allegations contained in paragraph 82 of the Complaint as this paragraph plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

83. Bank of America avers that the allegations contained in paragraph 82 of the Complaint as this paragraph plead a conclusion of law to which no response is required. To the extent any of these averments may be deemed averments of fact to which a response is required, each such averment is denied.

## **COUNT II**

### **New Jersey Consumer Fraud Act (NJCFA)**

84. Bank of America repeats, and makes part hereof, its responses to the allegations contained in paragraphs 1 through 83 of the Complaint as if fully set forth at length herein.

85. Bank of America denies the allegations contained in paragraph 85 of the Complaint.

86. Bank of America denies the allegations contained in paragraph 86 of the Complaint.

87. Bank of America denies the allegations contained in paragraph 87 of the Complaint.

88. Bank of America denies the allegations contained in paragraph 88 of the Complaint.

89. Bank of America denies the allegations contained in paragraph 89 of the Complaint.

90. Bank of America denies the allegations contained in paragraph 90 of the Complaint.

91. Bank of America denies the allegations contained in paragraph 91 of the Complaint.

92. Bank of America denies the allegations contained in paragraph 92 of the Complaint.

#### **VI. Prayer for Relief**

Bank of America denies that Plaintiffs are entitled to the relief sought in their Prayer for Relief.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim against Defendant upon which relief may be granted.

##### **SECOND AFFIRMATIVE DEFENSE**

The Plaintiffs do not have standing to assert a claim under ECOA because they are not in the protected category of individuals covered by the Act.

**THIRD AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim for injunctive relief against Defendant and, therefore, should be dismissed with prejudice.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs fail to state a claim under New Jersey's Consumer Fraud Act.

**FIFTH AFFIRMATIVE DEFENSE**

There is a foreclosure proceeding commenced by BAC Home Loans Servicing, LP, on behalf of Defendant herein against Plaintiffs in the Superior Court of New Jersey, Gloucester County, F40229-09, commenced prior to this proceeding, and in which the Plaintiffs herein are named as defendants and whom have defaulted, and in which the claims asserted in this Action are germane.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs defaulted under the subject loan and, therefore, are not entitled to any relief as against Defendant.

**SEVENTH AFFIRMATIVE DEFENSE**

The Complaint is barred by the applicable statutes of limitations.

**EIGHTH AFFIRMATIVE DEFENSE**

The Complaint is barred by the Statute of Frauds.

**NINTH AFFIRMATIVE DEFENSE**

Defendant breached no contractual, common-law or statutory obligations owed to Plaintiffs and, therefore, the Complaint should be dismissed with prejudice.



**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs have not suffered any damage or loss by reason of any acts or omissions of Defendant and, therefore, the Complaint should be dismissed with prejudice.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrines of estoppel, waiver and/or ratification.

**TWELFTH AFFIRMATIVE DEFENSE**

Any harm and/or damages allegedly sustained by Plaintiffs resulted from their own acts or omissions, or the intervening/superseding action of third parties, for whom Defendant is not responsible.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs should be barred from recovery to the extent they received any benefit from the actions alleged in the pleadings.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Defendant acted, at all times, in good faith and pursuant to the express terms of the subject loan documents.

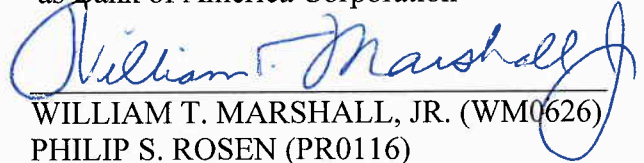
**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the absence of any compensable damages.

DATED: May 30, 2011

ZEICHNER ELLMAN & KRAUSE LLP  
Attorneys for Defendant Bank of America, N.A.,  
f/k/a Countrywide Bank, FSB, improperly sued  
as Bank of America Corporation

By:

A handwritten signature in blue ink, appearing to read "William T. Marshall, Jr.", is written over a horizontal line.

WILLIAM T. MARSHALL, JR. (WM0626)

PHILIP S. ROSEN (PR0116)

KERRY A. DUFFY (KD6480)

103 Eisenhower Parkway

Roseland, New Jersey 07068

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